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Supreme Court, U.S.
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No. 07-814

In The

Supreme Court of the United States

Donald A. Bealer;
Marianne C. Bealer;
James R. Bealer (Withdrawn)

Petitioners

v.

The Mutual Fire, Marine and Inland Insurance Company; The Franklin Homeowners Assurance Company; FHA Holding Company; Mike Petrelia, Individually and as CFO & Treasurer; Frank McCall, Individually and as Assistant Controller

Respondents

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Third Circuit

PETITION FOR WRIT OF CERTIORARI
As Amended 12/14/07
From 10/12/07 Original

Donald A. Bealer, FCAS, MAAA
Pro Se Plaintiff
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a. Questions Presented for Review

1. Were plaintiffs' constitutional rights to a fair and impartial proceeding violated when the case was fixed as to a predermined outcome in favor of defendants?
2. Does the gravamen rule apply under any (or all) of the following circumstances:
   (a) Where there is no contract or agreement to provide services, no services were provided, and no payment was made
   (b) Where defendants attempted to steal services for another company.
   (c) Where there was no product injury, but a substantial Bodily Injury to the plaintiff.
3. Does lying to plaintiffs to obtain lower costs and more favorable loss reserve opinions fall into the larger social policies embodied in the law of torts under Bohler and common law?
4. Do the courts have the right to change or ignore the facts and evicence in their opinions (e.g., Defamation & Medical)?
5. Are bodily harm injuries caused by stress compensable under RICO for bribery, extortion, interference with commerce (defamation), and obstruction of justice? Should money withheld by defendants as part of an extortion plot under RICO be trebled?
6. Does the discovery rule apply, starting when the plaintiff knew or should have known (as to injury and cause) for the tolling of statutes of limitations on:
   (a) Bodily Injury claims, particularly for a condition.
   (b) For fraudulent contract dealings.
   (c) For interference with contractual relationships.

(d) For defamation damages.

b. Parties are listed on the cover sheet. There are no corporate disclosures related to plaintiffs.

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Order by the U.S. District Court Dated 9/20/06 along with the 9/19/06 Summary Memo on the Record and the Initial Order dated 8/21/06 that are referenced App. V

Case Citings ("A" page references are to Appendix I):

Werwinski v. Ford Motor Co., 286 F. 3d 661, 680 n. 8 (3rd Cir. 2002)
Also Third District Court of Appeals (No. 00-4323, 4/15/02, P. 16)
Also 9/1/02 Journal of Risk Insurance (Goliath Business Knowledge on Demand) (Google search) 5, 6, 7, A2, A3, A6

REM Coal Co. v. Clark Equipment Co.
563 A. 2d 128, 134 (Pa. Super. Ct. 1989) 6, A2, A3, A4

Shirley Zwiercan, et al v. General Motors Corp., et al
Phila. Common Pleas, Junc Term, 1999 No. 3235, 9/11/02, pages 14 & 15 A3

Bohler-Uddeholm America, Inc. v. Ellwood Group Inc.
247 F. 3d 79, 104 (3d Cir. 2001) 6, 7, A4, A5

FL Receivables Trust 2002-A v. Paul Bagga, et al (No. 03-LV-5108) A4

RAG v. WC Appeal Board (2007-PA Supreme Court) A11

Fine v. Checcio, 870 A. 2d 850, 858 (Pa. 2005) 8, A12

Crouse v. Cyclops Indus., 745 A. 2d 606, 611 (Pa. 2000) 8, A12

Dalrymple v. Brown, 701 A. 2d 164, 170 (Pa. 1997) A12

Bowe v. Allied Signal Inc., 806 A. 2d 435, 440 (Pa. Super. Ct. 2002) A12

Cochran v. GAF Corp., 666 A. 2d 245, 249 (Pa. 1995) A12

Pioneer Investment...v. Brunswick Associates...(U.S. Supreme Court, No. 91 – 1695, Decided 3/24/93) 8

Law Citing:

Racketeer Influenced and Corrupt Organizations Act (RICO)
Title 18, Part 1, Chapter 96, Sections 1961-1968

Prior Opinions

11/30/04 - Philadelphia Common Pleas Court
Order With Leave to Amend
8/1/05 - Memorandum and Order - U.S. District Court
2/1/06 - Memorandum and Order - U.S. District Court
5/3/06 - Memorandum and Order - U.S. District Court
6/21/07 - U.S. Court of Appeals Denial
7/16/07 - U.S. Court of Appeals Denial of Rehearing

e. Statement of the Basis for Jurisdiction

The petition for rehearing before the U.S. Court of Appeals for the Third Circuit was denied dated 7/16/07. As we understand it, this Court has jurisdiction pursuant to 28 U.S.C. Sec. 1254.

g. Statement of the Case

This case involves a consulting actuary, Don Bealer, who was retained over several years to do work for Mutual Fire, Marine and Inland Insurance Company primarily for loss reserve opinions on that company. There were occasional other jobs that were done for that management group that included a rate filing for Franklin Homeowners Assurance Company (no reserve opinions), and a report on loss reserves for a company they sought to acquire during the summer of 2003.

On March 1, 2001, the management at Mutual Fire attempted to steal services for another company they managed and they demanded that I do the work right away (for free). This was at the height of my busy season where there was no time available. They continued to press this for nearly two months. This dishonesty led me to be concerned about prior potential thefts that they claimed they didn't owe for various reasons that sounded plausible at the time. I also developed concerns about their overall integrity as they repeatedly claimed to have no loss payments on older claims and no losses reported on newer business. If it turned out they were lying, I faced lawsuits, disciplinary actions, and possibly criminal prosecution.

All of the stress and anxiety led to a breakdown where I could do little work. I was constantly exhausted and had no idea what was happening. I sought medical help on 4/17/01, complaining of numerous stress related symptoms, including fatigue and dramatic weight gain. Numerous tests, rest, and weight loss were prescribed which took time. I also was treated frequently for various symptoms. What caused the symptoms was not known until 12/02 as I was eventually diagnosed with extremely low testosterone levels. Treatment provided some improvement.

However, the improvement was short lived as this client began making numerous illegal demands throughout 2003 (RICO violations). This included trying to force me to lie about their reserves and the reserves of a group of poor policyholders of another company in an attempt to steal their surplus. I refused and was put through several ordeals that lasted throughout the year. Symptoms returned and I sought help from a specialist (an endocrinologist with long waiting lists). Between April and August, 2004, I was diagnosed again with extremely low testosterone levels as well as the cause (stress and stress induced obesity). Several other specialists were seen to rule out all other causes. I filed suit as soon as I knew on August 26, 2004.

I also learned that these people were defaming me. Known occurrences were with other actuaries and the Pennsylvania Insurance Department (during a project with the Financial Examinations division). They have since non-renewed my consultant status with them after more than 15 years with complements. Three other divisions of the department that were not subjected to their defamatory remarks recently renewed my consultant status with them.

All of these actions – the disability, the interferences, and the defamations – caused me to lose all of my local clients. All retained and new clients were out of earshot of defendants.

The initial Philadelphia pro se case was dismissed due to failure to state a claim with permission to refile. It was refiled in Federal Court due to high damages and Federal RICO violations on or about December 20, 2004.

Ample evidence was provided as to defendants' misconduct and medical proof.

The lower Federal court dismissed practically everything before discovery on August 1, 2005. He dismissed virtually everything else on February 1, 2006. A partial settlement was made as to contract amount only on the amount withheld through extortion ($8,245).

An appeal was filed on 12/18/06 and denied on 6/15/07. A rehearing was requested on 7/3/07. That was denied on 7/16/07.

h. Arguments in Support of Petition

1. The case was fixed in violation of my constitutional rights.

The basis of the appeal was largely about repeated acts of bias by the judge (all in favor of defendants). In fact, the 30 (12/18/06) and 15 (1/19/07) page limitations were basically used up discussing them because there were so many and they were frequently so outrageous. Hence we cannot detail them here due to page limitations. Some of the most notable include:

(a) Dismissal of practically all of the case before discovery (8/1/05 Opinion).
(b) Continued refusal to any form of interrogatory (or deposition) of defendants.
(c) Using the results of private conversations with defendants in his decisions, even though they were contradicted by documented proof and were not on the record. Defendants are not on the record for anything except a few documents.
(d) Refusal to nullify confidentiality agreements that cover illegal activities.
(e) Initially ignoring the discovery rule (known or should have known) for applying statutes of limitations (10/20/05 discovery hearing).
(f) Slipping and saying I won't receive any compensatory damages (10/20/05 discovery hearing).
(g) Ruling in favor of defense's Summary Judgment Motion despite defense attorneys' constant lies about there being no recent interference with clients in my deposition. They also lied about statutes of limitations running from the dates of the bad acts (among others). There were 45 pages in my deposition on recent interference, most notably their defamation spree with the PA Insurance Department. Since I argued the discovery rule, the

judge now had to accept it. However, to still give them what they wanted, he threw out the recent interference and rewrote their motion to grant it (2/1/06 Decision on Summary Judgment Motion).

(h) Now that he had been forced into allowing the discovery rule, he had to lie (and did) about the medical evidence, making it sound like I didn't seek treatment. The piles of evidence prove this. He also cited certain cases to support this. We were able to find 5 of them. Not a single one supported his position. For two of them, the PA Supreme Court ruled in favor of plaintiffs, granting very liberal discovery dates. For two others, there was evidence that plaintiffs knew of the cause of their injuries. The third involved repressed memory. These last three had no relevance (5/3/06 Response to Motion to Reconsider).

The appeals court essentially rubber stamped all of this, except they appear to be ignoring the discovery rule. In addition, they seemingly had private conversations with the defendants in their ruling on defamation. None of what they talked about was on the record. They also omitted the PA Depatment of Insurance. If you will recall, defendants are on the record for nothing. The appeals court also was caught misrepresenting their own case citings as well. They even tried to cover-up the case citing in Warwinski, (it was smudged in the original document). We also noted there was no author listed and the bolding of **NON-PRECEDENTIAL.**

We know who some of these people are. Mutual Fire was ordered to settle about $60 million in claims more than 10 years ago. They have violated that order by paying no claims. Instead they withdrew more than $50 million for their own use. The chief defense attorney (Mr. Lamb) is one of governor Rendell's' favorite appointees

(including the PA Supreme Court and as judge for lawyer ethics). Judge Rendell in this opinion is the wife of governor Rendell. He is ultimately responsible for regulating Mutual Fire through the insurance department and the attorney general's office. Neither has done anything about Mutual Fire's failure to pay any claims. Ms. Rendell should have recused herself because her husband is culpable for the massive fraud promulgated by Mutual Fire.

In all, the lower court judge committed 46 acts of bias. The odds of that occurring are 1 in 70 trillion. Mutual Fire has denied more than 203 claims (and paid none). The odds of that is 1 in infinity. This is like DNA in a murder case. You have a 100% match in this case and you have more than 203 bodies in the closet. The smoking gun is not necessary to convict.

2. Gravamen and 3. Tort Principles.

The gravamen argument is addressed in the Request for En Banc Rehearing and Panel Rehearing, which are attached. The appeals court's two reference cases support the plaintiff. It is clear that the PA Supreme Court (REM) and the Third Circuit Court of Appeals (Warwinski) do not apply when there is bodily injury. Bohler requires that they behave and not act in violation of tort standards. As this decision stands, defendants can do anything they want to me while they are trying to steal services, which is exactly what they did.

4. Defamation.

The defamation claims are also discussed in the attached Petition. Their version of the act is not remotely believable and it ignores the defamation acts with the Financial Exams section of the PA Insurance Department (who has removed me from their consulting list).

5. RICO violations.

These are also covered in the attached Petition.

6. Discovery Rule (known or should have known).

These are also covered in the attached exhibits and had previously been discussed as part of the fix. My knowledge of the Discovery Rule as an insurance actuary really created a problem for the fix as now all the lawyers had to commit other bad acts to cover-up.

In summary, there is a much bigger picture here and there are numerous inconsistent rulings with several high courts (including their own).

1. The massive policyholder fraud is national in scope.

2. Group Nifonging - We have repeatedly caught all of the defendants, defendant lawyers, and judges lying. It is all on the record if anyone wants to look. More than 90% of the public agreed that Mr. Nifong should be disbarred and jailed (which he was).

3. Sarbanes-Oxley - This type of looting was the specific target of the Sarbanes-Oxley legislation for publicly traded corporations. Those folks have all been found liable and are in jail. Mutual Fire has avoided Federal prosecution because it is not a publicly traded corporation. It is the responsibility of the state of PA.

4. The gravamen rulings are contrary to the Third Circuit's own ruling in the Warwinski appeal and in rulings cited in that case by the PA Supreme Court. It also is contrary to the Third Circuit ruling in Bohler. These are their own case citings in this case. The rulings are beyond any common law equity or common sense.

5. The Discovery rulings are contrary to the PA Supreme Court rulings in the two citings by the lower court judge (Fine & Crouse). They are also contrary to the vast majority of courts across the nation (including the U.S. Supreme Court [e.g., Pioneer... v. Brunswick...]).

For all of the above reasons, we plead to this court to overturn these rulings. We have stepped up to the plate to protect others at a great cost. Someone should support us and that support is not coming from Pennsylvania.

Donald A. Bealer

Donald A. Bealer, FCAS, MAAA
Pro Se Plaintiff

Appendix I NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 06-4351

DONALD A. BEALER;
MARIANNE C. BEALER;
JAMES R. BEALER (WITHDRAWN)

V.

THE MUTUAL FIRE, MARINE AND INLAND INSURANCE COMPANY; THE FRANKLIN HOMEOWNERS ASSURANCE COMPANY; FHA HOLDING COMPANY; MIKE PETRELIA, Individually and as CFO & Treasurer; FRANK MCCALL, Individually an as Assistant Controller

Donald A. Bealer, Appellant

On Appeal From the United States District Court
For the Eastern District of Pennsylvania
(E.D. Pa. Civ. No. 04-cv-5915)
District Judge: William H. Yohn, Jr.

Submitted Under Third Circuit LAR 34.1(a)
June 1, 2007

Before: RENDELL, HARDIMAN AND
COWEN, CIRCUIT JUDGES

Petition for En Banc Rehearing and Panel Rehearing

Signed: July 3, 2007
Donald A. Bealer
Pro Se Plaintiff

Petition for En Banc Rehearing and Panel Rehearing

The panel decision conflicts with several decisions of the Pennsylvania Supreme Court and the Third Circuit (discussed herein), and consideration by the full court is therefore necessary; and the proceeding involves one or more questions of exceptional importance: it denied my constitutional right to a fair and impartial proceeding (among others). I express a belief, based on 35 years as an insurance actuary responsible for loss reserving duties (including Pennsylvania), that the criteria of Rule 35 (b) (1) above are met.

As a pro se plaintiff, all parties (including judges) knew I could not access case citings. I was able to find out about 7 key cases cited through Google searches and none favored defendants; most favored plaintiffs.

Negligence, Fraud and Misrepresentation

The Werwinski v. Ford case was about warranty claims against Ford for failing transmissions. The contract or warranty claim covered the cost of replacing the transmissions. There were other claims of torts that might raise the recovery amount such as the cost of the entire car under a consumer fraud law. There were no damages for any other property and no personal injury damages. At issue was how much plaintiffs could recover for the same injury (to the transmissions only).

This was not a "gist of the action" doctrine issue, but an economic loss case. The district court was merely drawing an analogy by comparing it to REM (the most authoritative gist issue case). In its discussion, the Third District Court of Appeals noted (No. 00-4323, 4/15/02, page 16):

"Although the Supreme Court of Pennsylvania has

> not ruled on the viability of the economic loss doctrine, an en banc panel of the Pennsylvania Superior Court adopted the doctrine largely as set forth in East River. In REM Coal Co. v. Clark Equipment Co., 563 A. 2d 128, 134 (Pa. Super. Ct. 1989), the court held that "negligence and strict liability theories do not apply in an action between commercial enterprises involving a product that malfunctions where the only resulting damage is to the product itself." Following the Supreme Court's reasoning in East River, the court stated, "contract theories such as breach of warranty are specifically aimed at and perfectly suited to providing complete redress in cases involving...economic losses." Id. at 129."

A 9/1/02 Journal of Risk and Insurance article about the case (appears on Goliath Business Knowledge on Demand through a Google Search on Werwinski v. Ford) made the following comments:

> "Consequently, where a defect in the automobile product injures only the automobile and not the consumer or a third party, the matter should be resolved as a matter of breach of contract warranty with damages determined by contract law....The key consideration is whether there has been an injury to a person or property other than the vehicle itself."

The court of Common Pleas of Philadelphia County also quoted from REM in Shirley Zwiercan, et al v. General Motors Corp., et al (June Term, 1999 No. 3235, 9/11/02, pages 14 &15).

> "REM Coal Co. Inc. v. Clark Equipment Co., 386 Pa. Super. 401, 563 A.2d 128 (1989). In an attempt to guide future courts on the application of the

> doctrine, the Superior Court stated that "the proper focus is not on the type of risk, but the actual harm for which the plaintiff seeks recovery." Id. at 134. Unfortunately, there is much confusion in the Pennsylvania cases as to the scope and breadth of the economic loss doctrine. For the reasons discussed below, this Court finds that the economic loss doctrine does not bar Plaintiff's UTPCPL claim".

The Supreme Court's argument in REM is reasonably clear. The focus should be on the "actual harm" and these doctrines should only apply "where the only resulting damage is to the product itself." In Bealer there are separate damages and actions for contract (non-payment) and for bodily harm and other damages (negligence, misrepresentation, and fraud).

We will turn now to Bohler-Uddeholm America, Inc. v. Ellwood Group Inc. 247 F. 3d 79, 104 (3d Cir. 2001). We ran across a 3/8/05 Memorandum and Order from the U.S. District Court for the Eastern District of Pennsylvania. In FL Receivables Trust 2002-A v. Paul Bagga, et al (No. 03-LV-5108), the judge refers to Bohler in full context (with emphasis added to when).

> "Thus, "a claim should be limited to a contract claim when the "parties" obligations are defined by the terms of the contracts, and not by the larger social policies embodied in the law of torts." Bohler-Uddeholm America, Inc. v. Ellwood Group, Inc., 247 F.3d 79, 104 (3d Cir. 2001) (quoting Bash v. Bell. Tel. Co., 601 A.2d 825, 830 (1992)). A tort claim may still lie against a defendant even though the conduct on which the tort is based falls within the scope of a contract. That a defendant's conduct is governed by the contract, therefore, is not dispositive; rather, the essential question is whether

the defendant accepted by entering into the contract. See Bohler-Uddeholm, 247 F.3d at 105 ("This duty imposed obligations on [the defendant] that went well beyond the particular obligations contained in the [a]greement itself").

"In this case, Plaintiff's fraudulent transfer claim involves allegations that go beyond Defendants' failure to honor their contractual obligations. Plaintiff has alleged that Defendants have attempted to conceal their assets...Plaintiff's fraud claim is based on the Baggas' violation of a duty grounded in larger social policies, rather than merely the terms of the parties' agreement. Accordingly, the Court finds that Plaintiff's fraud claim is not barred by the gist of the action doctrine."

In this case, Bohler is used to refute the gist of the action doctrine in a fraudulent concealment claim. This is analogous to Mutual Fire's repeated concealment of the true scope of their projects and the true nature of their losses and other types of fraud in which they were trying to involve me. All of these acts contributed to the stress induced disability. Mutual Fire had a common law/common decency duty to provide truthful and complete information and to refrain from involving me in their numerous illegal and unethical acts.

To summarize the "gravamen" issue, this panel suggests that this claim "merely replicates a claim for breach of an underlying contract" and that "the tortious wrong ascribed to the defendant must be the gist of the tort action (with contract being collateral)."

The common sense/simple equity response to this is (and has been):

1. The tort claims do not replicate the contract

claims. These are listed as separate causes of action for completely separate injuries such as non-payment under contract and bodily injury under tort. These are not different estimates of loss for the same injury under the gist doctrine.

2. There was no underlying contract for a prolonged attempt to steal services for a separate company (Franklin Homeowners) during the peak of our busy season. This company was not even a twinkle in my eye and Mr. Petrelia eventually agreed in writing (see Amended Complaint Exhibits 7a-7e, 7bb).

3. The gist of the action was always bodily injury with damages in the neighborhood of $1 million. The failure to pay actions under contract were only in the neighborhood of $10-$15 thousand. We are talking about bodily injury damages of 67 to 100 times those under contract. Gravamen does mean "weight" of the claim, which is clearly tort.

4. The causes were segregated with contract as collateral.

5. We have also argued that these were criminal and unethical acts.

We now find that this panel's citations do not support dismissal. In fact, these cases support reinstatement with the only relevant PA Supreme Court decision pointing to reinstatement. This has been noted by the lower court and this appeals court in Werwinski. We have cited other favorable Philadelphia decisions as well. Justice dictates that negligence, fraud and misrepresentation should be reinstated.

Slander/Libel

On the slander claim, this panel stated:

> "According to Bealer, defendants slanderous remark was that Bealer was "adamant" about not making false or improper changes to his actuarial report.....implies that Bealer possesses, rather than lacks professional integrity."

What I said is on Appendix page 106 (Amended Complaint #53):

> "Bealer had become adamant about making wording changes..... other incidents. ...Clients do not want anything to do with an actuary that will be adamant about reserve amounts (let alone wording)."

This new version by the panel makes it sound singular and gets both ends wrong. There were several calls when they were trying to replace me. Imagine Mutual Fire telling all those actuaries that they were firing me because I was adamant about false or improper changes to their own reports. This has nothing to do with integrity either. It has everything to do with working together with the CEO's and CFO's that hire us for projects involving the single most important item affecting insurance company results (loss reserves). In the deposition, they asked me 10 times who told me because they didn't know which one came forward. It was also a very effective threat.

I also later learned that they were making slanderous remarks to the Pennsylvania Insurance Department while I was working with the state on a large project. That project suddenly became difficult as the department was insisting on the report (i.e. wording) before data issues and revisions to calculations were complete. That project did not end well as I had unpaid hours and they haven't called

back since.

Prior to that, I had worked as a consultant to the insurance department with complements for about 15 years. This and other acts were described in the 45 pages of recent acts from my deposition referred to this panel.

There were additional written comments that accompanied the distribution of our reports that were dishonest and would leave recipients concerned about me because no opinion was written (according to them).

What is more troubling is that the facts were changed to make it look harmless. Either the panel chose to do it or they were given the story by defendants (which they also did in the lower court proceedings). Either way, there are ethics violations.

The bottom line is that defendants repeatedly made damaging oral and written defamations that caused damages.

RICO Acts

The primary RICO acts occurred during 2003. After work was completed on Mutual Fire's actuarial opinion and report during late winter, defendants demanded that I revise those documents to remove reference to known Asbestos and Pollution loss reserves that are required to be reported by law. This demand was an illegal act committed by Mr. McCall across state lines via the telephone. He threatened to fire me and refused to pay for that work unless I complied. These illegal acts are extortion under RICO. Eventually this was paid (except for $300).

During most of the summer of 2003 I was evaluating reserves for a small Pennsylvania Homeowners insurance company they sought to acquire. Late into the project, I submitted some preliminary calculations and let it be

known that we were still waiting for additional information.

A phone conversation between myself, Mr. Petrelia and Mr. McCall ensued during late August, 2003. During that conversation, Mr. Petrelia informed me for the first time that this was going to be a mutual to stock conversion and that I was to make the target company's surplus zero. He promised me future work regarding this company if I did (bribery) and later threatened me with firing and refused to pay about $10,000 in work done to date (extortion) if I did not. The effect of this conspiracy would be to steal the surplus of the company owned by a group of poor PA homeowners.

Shortly thereafter, I informed them that I would not perform those illegal acts. If he wished to proceed, I would require payment for prior work before I would continue (due to the extortion threat). At that point, calculations were incomplete and no report existed (contrary to the judge's assertion from off the record comments that a report was withheld).

Mr. Petrelia paid the amount due and told me to proceed. I did and Mr. Petrelia refused to pay the amounts due for the second part of the contract without unacceptable conditions. This amount was $8,245 and this carried out his RICO threat, as there was no valid basis to refuse payment. I spent most of the fall trying unsuccessfully to secure payment.

I would later learn that they were calling a lot of people to replace me after I told them that I would not perform the illegal acts they demanded. They were trashing my reputation ("adamant" comments) and passing out my reports without the required consent. They made these people sign confidentiality agreements so they wouldn't get back to me. This was fairly widespread and we know

it went as far as Connecticut. These slanderous and libelous acts were done with malice and intent to do harm (interference with commerce and obstruction of justice violations of the RICO act). There were numerous other bad acts during 2003 and other years.

During late 2002 and early 2003, I was diagnosed with extremely low testosterone levels and began treatment through steroids. This is only temporarily relief as cure is uncertain. I was finally starting to see some improvement from the same stress caused injuries at their hands in prior years. Stress induced weight gain and direct psychological stress pushed me back to where I was and severely hampered by ability to work. This included another project and marketing activities that were time sensitive. I was no longer getting the normal calls from potential new clients or old clients.

The damages to my health and my reputation due to their malicious acts aggravated and prolonged my disability directly. The normal result of a disability is lost income and lost business (direct and proximate cause). The full effect is unknown because the disability continues today.

In addition, the amounts they refused to pay resulted directly from racketeering acts. These amounts were only paid after a few years and thousands of dollars chasing them through the courts (commencing August, 2004). That amount was settled as to contract amount only in May, 2006. This was clear from the transcript which was included in the appendix of the appeal. That settlement did not apply to appealable causes of action, including RICO. The $8,245 should be trebled.

Statutes of Limitations

The bodily injury caused by defendants, throughout

March-April 2001 is the main event. This was a prolonged attempt to steal services. I was basically unable to work, as I was always exhausted. What few spurts I did have were mostly spent fighting these people off. This was at the peak of my busy season and they knew that before, during, and after the assault. At this time, I was now suspecting numerous other illegal acts such as prior thefts, financial statement fraud, etc. that could jeopardize my career and freedom. Stress related injuries are not uncommon and are recognized by the PA Supreme Court. In one recent case, benefits were awarded based on nice butt type comments (RAG v. WC Appeal Board).

The discovery rule is the law of the land (including PA) and has been since at least the last 35 years. Yet the lower court judge was about to rule that the statute runs from the day of the act when I reminded him about the "known or should have known" criteria. I told him that I had no idea what was happening to me. He acted as if that was news to him. This is (or should be) in the transcript of the 10/20/05 discovery hearing.

The judge then ruled that the discovery rule applied in his 2/2/06 ruling. When he realized that wouldn't work, he changed his ruling to suggest I did not do enough to seek the diagnosis and cause of my injuries.

To do that, he now had to change the facts and the evidence as well as put up some case law that, in the end, did not help his position. This was on 5/3/06 (Pages 10-12). Two key issues here is his assertion that I provided no evidence as to cause. In addition, he characterized my medical records as "seemed to focus on a routine physical examination with minor complaints and an ear infection" (page 12). There were other false conclusions and facts.

We provided the judge with numerous doctor, dentist

(osteoporosis) and other specialists' records, including numerous tests. Two of these were reproduced in the Appeal. Exhibit A2 shows a 4/17/01 appointment where I talked about a physical, blood in stools, weight gain, blackouts, and fatigue (among others). The doctor ordered 8 test groups and told me to lose weight (and rest). All of that was done over a lengthy period but did not yield relief, a diagnosis, or cause. Numerous symptoms for this same condition were treated over time. Eventually, I was referred to an endocrinologist (hormone) doctor who diagnosed me as to condition (extremely low testosterone) and cause (stress and (stress induced) obesity). These appear in her notes as Exhibit A1 of the Appeal. In addition, the Amended Complaint included textbook causations on Exhibit 19. Exhibit 20 shows symptoms. These are busy specialist and I had to wait 4 months for appointments.

This is emerging medicine and little was known about treating this condition or causes until later years. Everything possible was done in terms of diligence. Yet the judge chose to mischaracterize the facts and the evidence to achieve the predetermined results.

The case law he cited has similar fatal flows. The judge cites five cases in this section. In Fine, the PA Supreme Court ruled for plaintiffs in finding tolling began when the injury was known to be permanent (as opposed to temporary) in a dental malpractice suit (3/30/05). In Crouse, the PA Supreme Court found on 1/28/00 that the suit was timely filed and plaintiffs won. In the Dalrymple case, the PA Supreme Court ruled that repressed memory was not reliable (8/25/97). In Bowe and Cochran, there were prior medical records that indicated that the plaintiffs did know the cause of their injuries. There were also references to the jury being the proper finder of facts regarding the discovery rule. Two of these cases favor

plaintiffs who simply did not know enough about their injuries to file suit. The remaining three are irrelevant because the plaintiffs knew the causes or were based on unreliable memories.

The lower court talked about other identified acts of interference and found contrived excuses to ignore them. I resisted identifying certain parties because defendants had been caught defaming me and threatening myself and others (all on multiple occasions). The judge refused to do anything to protect me or others from further harm (as I am required to mitigate damages by law). The appeals panel actually stated there were no other claims for intentional interference. These were the recent interferences that were described in the 45 pages of deposition. The attorneys lied about these not even existing, and that was pointed out to both courts.

Costs

It was defendants various illegal acts that damaged us and now the panel wants us (the innocent victims that attempted the protect ourselves and other parties) to pay defendants' fees. We were unable to afford an attorney. They hired a former PA Supreme Court Justice to continue Nifonging me in violation of several PA ethics rules. 92% of the public agreed with Nifong's disbarment per an AOL poll. This entire proceeding violates public policy.

Summary

Mutual Fire was ordered to settle roughly $60 million in insurance claims by a PA judge when it came out of rehabilitation at the end of 1996. They still refer to this case as controlling claims in their financial statements. Instead, they violated that order repeatedly and paid no losses. The total amount that they assumed control over exceeds $150 million; more than $50 million is out the

door. There were at least 203 insurance claims denied. The probability of winning all 203 claims is about the same as the Phillies sweeping the preseason, the regular season, and the playoffs (30 + 162 + 11 = 203). It is the same probability of throwing a coin for 203 straight heads. That probably is zero. The only way that happens is through fixing the entire schedule, which is what they did. This case was merely a roadmap of how they did it. The lower court judge has now committed at least 46 counts of bias. The odds of that occurring in a fair environment are 1:70 trillion [1.0/((.5)^46)]. Simply stated, this case was corrupted just like all of the defendants' insurance claims were.

It is apparent that the appeals panel's NOT PRECEDENTIAL opinion was based solely on the judge's decision without any indication that they read the appeal. Too many important issues were ignored or misstated. In fact, they cited some cases that favor plaintiffs as well. We believe it is not possible to obtain our constitutional guarantee in this environment and request that it be moved to New Jersey as originally filed for my side of discovery and for trial.

Appendix II **NOT PRECEDENTIAL**

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 06-4351

DONALD A. BEALER;
MARIANNE C. BEALER;
JAMES R. BEALER

v.

THE MUTUAL FIRE, MARINE AND INLAND INSURANCE COMPANY; THE FRANKLIN HOMEOWNERS ASSURANCE COMPANY; FHA HOLDING COMPANY; MIKE PETRELIA, Individually and as CFO & Treasurer; FRANK MCCALL, Individually and as Assistant Controller

Donald A. Bealer, Appellant

On Appeal From the United States District Court
For the Eastern District of Pennsylvania
(E.D. Pa. Civ. No. 04-cv-5915)
District Judge: William H. Yohn, Jr.

Submitted Under Third Circuit LAR 34.1(a)
June 1, 2007

Before: RENDELL, HARDIMAN AND COWEN, CIRCUIT JUDGES

(Filed: June 21, 2007)

OPINION

PER CURIAM

Donald Bealer appeals an order of the United States District Court for the Eastern District of Pennsylvania granting defendants' motion for partial summary judgment, and an order dismissing certain claims for failure to state a claim upon which relief may be granted. For the reasons below, we will affirm the District Court's judgment.

I.

On December 20, 2004, Bealer filed a pro se complaint against defendants Mutual Fire, Marine and Inland Insurance Company (Mutual Fire) and its corporate officers Mike Petrelia and Frank McCall, Franklin Homeowners Assurance Company (FHA), and FHA Holding Company. Bealer filed an amended complaint on April 18, 2005. The amended complaint contained nine counts: (1) breach of contract, (2) negligence, (3) slander, (4) libel, (5) negligent misrepresentation, (6) intentional interference with contractual relations, (7) fraud, (8) intentional infliction of emotional distress, and (9) civil RICO. Bealer claimed the causes of action arose out of actuarial services he performed for defendants from 1997 through 2003. Defendants filed a motion to dismiss, which the District Court granted in part and denied in part. Specifically, the District Court dismissed all counts except count one–seeking payment for actuarial services provided to defendants for the years 1997 through 2003–and count six–alleging that defendants intentionally interfered with Bealer's contracts with certain other clients. Thereafter, defendants filed a motion for partial summary judgment. The District Court granted the motion, ruling that Bealer's breach of contract claims, except those concerning contracts allegedly breached in 2003, were barred by the statute of limitations. The District Court also ruled that Bealer's claim concerning

intentional interference with contractual relations was either barred by the statute of limitations or without merit. Thus, the only remaining claims were Bealer's breach of contract claims for services performed in 2003. On May 30, 2006, the parties settled the remaining contract claims before the Court. Accordingly, on September 22, 2006, the District Court entered an order dismissing Bealer's breach of contract claim based on the settlement, without prejudice to Bealer's right to appeal the dismissal of other claims. Bealer appealed.

We have appellate jurisdiction pursuant to 28 U.S.C. § 1291. Our review is plenary. See Malia v. General Elec. Co., 23 F.3d 828, 830 (3d Cir. 1994). In reviewing the order granting the motion to dismiss, we apply the same test as the District Court and must accept as true the facts alleged in the complaint and view them in the light most favorable to the plaintiff. See Fagin v. Gilmartin, 432 F.3d 276, 281 (3d Cir. 2005). In reviewing a grant of summary judgment, we must view the facts in the light most favorable to the non-moving party. See Smith v. Mensinger, 293 F.3d 641, 647 (3d Cir. 2002). Summary judgment is appropriate only if "there is no genuine issue as to any material fact and ...the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c).

II. Discussion

With respect to its order of August 1, 2005, the District Court correctly granted in part defendants' motion to dismiss. The District Court ruled that Bealer's negligence, negligent misrepresentation, and fraud claims were barred by the "gist of the action" doctrine. We agree. The gist of the action doctrine bars a plaintiff from bringing a tort claim for damages that merely replicates a claim for breach of an underlying contract. See Werwinski v. Ford Motor Co., 286 F.3d 661, 680 n.8 (3d Cir. 2002). Bealer's claims of negligence, negligent misrepresentation, and fraud are barred because the gravamen of the claims is in contract. See Bohler-Uddeholm America, Inc. v. Ellwood Group, Inc., 247 F.3d 79, 103 (3d Cir. 2001) (to be construed as a tort action (and not a contract action), the tortuous wrong ascribed to the defendant must be the gist of the tort action with the contract being collateral). Thus, the District Court correctly dismissed those claims.

The District Court also correctly dismissed counts three and four (slander and libel respectively). According to Bealer, defendants' slanderous remark was that Bealer was "adamant" about not making false or improper changes to his actuarial reports. We agree with the District Court that this statement cannot be construed to harm Bealer's reputation. See U.S. Healthcare, Inc. v. Blue Cross of Greater Philadelphia, 898 F.2d 914, 923 (3d Cir. 1990). Indeed, defendants' alleged statement implies that Bealer possesses, rather than lacks, professional integrity. With respect to this libel claim, Bealer alleges that defendants distributed his actuarial reports and opinions without his consent in 2003. For essentially the reasons given by the District Court, Bealer's allegations do not sufficiently establish a cause of action for either slander or libel.

We also agree with the District Court that Bealer failed to state a claim for intentional infliction of emotional distress. Although defendants might have been difficult to work with, Bealer failed to plead any conduct that was so outrageous and extreme as to go beyond all bounds of human decency. See Williams v. Guzzardi, 875 F.2d 46, 51-52 (3d Cir. 1989).

According to the District Court, Bealer's civil RICO claim in count nine of the amended complaint alleged two types of predicate acts that might form the basis of a RICO violation: (1) conspiracy to steal Bealer's services, and (2) using the United States mail to defraud insurance regulators and policy holders. The District Court correctly ruled that theft of services does not support a RICO claim. See Annulli v. Panikkar, 200 F.3d 189, 199 (3d Cir. 1999). Moreover, we agree with the District Court that even if Bealer adequately alleged predicate acts (mail fraud) sufficient to satisfy the pleading requirements for a RICO claim, Bealer lacked standing to raise a RICO claim, as he failed to make the threshold showing that (1) he suffered an injury to his business or property, and (2) the injury was proximately caused by defendants' racketeering activities. See Maio v. Aetna, Inc. 221 F.3d 472, 483 (3d Cir. 2000). In sum, we find no error in the District Court's decision to dismiss certain counts for failure to state a claim upon which relief may be granted.[1]

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[1] For the reasons given by the District Court, we agree that Mutual Fire's corporate officers Petrelia and McCall cannot be personally liable for the contract between Mutual Fire and Bealer. See Bel-Ray Co., Inc. v. Chemrite (Pty) Ltd., 181 F.3d 435, 445 (3d Cird. 1999). Thus, Petrelia and McCall were properly dismissed as defendants in the action. Moreover, Bealer's wife, Marianne Bealer, lacked standing to pursue either of the surviving claims of the amended complaint.

The District Court also correctly granted in part defendants' motion for summary judgment. Under Pennsylvania law, the statute of limitations for contract actions is four years. See 42 Pa. Cons. Stat. Ann. § 5525. Bealer filed his action on or about December 20, 2004. Accordingly, Bealer's claims stemming from contracts between 1997 and 1999 are time-barred. Bealer did not make any claims for contracts between the years 2000-2002. Thus, the District Court correctly granted summary judgment as to all the contract claims except the one claim for services performed in 2003. Also, under Pennsylvania law, the statue of limitations for a claim of intentional interference with a contract is two years. See 42 Pa. Cons. Stat. Ann. § 5524; see also CGB Occupational Therapy, Inc. v. RHA Health Services, Inc., 357 F.3d 375, 383-84 (3d Cir. 2004). The statute of limitations begins to run at the time the cause of action accrues. Id.[2] Bealer alleged that his claim for intentional interference of a contract occurred in March and April of 2001. According to Bealer, defendants' unreasonable demands during this time caused him to lose all of his other clients. We agree that this claim is time-barred. Bealer did not identify any other claims for intentional interference of a contract.

Based on the foregoing, we will affirm the judgment of the District Court.

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[2] We agree with the District Court's thorough analysis in its May 3, 2006 memorandum and order denying Bealer's motion for reconsideration, that under the facts of this case, the "discovery rule" did not toll the statutes of limitations. Dist. Ct. Memorandum, May 3, 2006 at 8-13.

Appendix III

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
NO. 06-4351

DONALD A. BEALER;
MARIANNE C. BEALER;
JAMES R. BEALER

v.

THE MUTUAL FIRE, MARINE AND INLAND INSURANCE COMPANY; THE FRANKLIN HOMEOWNERS ASSURANCE COMPANY; FHA HOLDING COMPANY; MIKE PETRELIA, Individually and as CFO & Treasurer; FRANK MCCALL, Individually and as Assistant Controller

Donald A. Bealer, Appellant

On Appeal From the United States District Court
For the Eastern District of Pennsylvania
(E.D. Pa. Civ. No. 04-cv-5915)
District Judge: William H. Yohn, Jr.

Submitted Under Third Circuit LAR 34.1(a)
June 1, 2007

Before: RENDELL, HARDIMAN AND COWEN, CIRCUIT JUDGES

JUDGMENT

This cause came on to be heard on the record from the United States District Court for the Eastern District of Pennsylvania and was submitted under Third Circuit LAR 34.1. On Consideration whereof, it is now here

ORDERED AND ADJUDGED by this Court that the judgment of the District Court entered September 22, 2006, be and the same is hereby affirmed. All of the above in accordance with the opinion of this Court. Costs taxed against appellant.

ATTEST:

/s/ Marcia M. Waldron
Clerk

DATED: June 21, 2007

Appendix IV

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 06-4351

DONALD A. BEALER,
Appellant

v.

THE MUTUAL FIRE, MARINE AND INLAND INSURANCE COMPANY; THE FRANKLIN HOMEOWNERS ASSURANCE COMPANY; FHA HOLDING COMPANY; MIKE PETRELIA, Individually and as CFO & Treasurer; FRANK MCCALL, Individually and as Assistant Controller

---

SUR PETITION FOR REHEARING

Present: SCIRICA, Chief Judge, SLOVITER, McKEE, RENDELL, BARRY, AMBRO, FUENTES, SMITH, FISHER, CHAGARES, JORDAN HARDIMAN, and COWEN*, Circuit Judges

The petition for rehearing filed by appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the deci-

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*Limited to Panel Rehearing Only.

sion having asked for rehearing, and a majority of the circuit judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is denied.

BY THE COURT,

/s/ Robert E. Cowen
United States Circuit Judge

Dated: July 16, 2007

lwc/cc: Mr. Donald A. Bealer
Guy A. Donatelli, Esq.
William H. Lamb, Esq.

Appendix V

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DONALD A. BEALER	:	CIVIL ACTION
Individually and doing business	:	
as Bealer Consulting	:	
vs.	:	
	:	
THE MUTUAL FIRE, MARINE	:	
AND INLAND INSURANCE	:	
COMPANY, ET AL.	:	NO. 04-5915

FILED SEP 21, 2006

ORDER

AND NOW, this 20th day of September, 2006, the parties having appeared for trial May 30, 2006 on the breach of contract claim, which was the only claim remaining in the action, and the parties having agreed to settle the action as to the contract claim without prejudice to the right of the plaintiff to appeal other claims in this action which had previously been dismissed, and the parties thereafter being unable to agree on the terms of a release, but the defendant having agreed to proceed without the execution of a release, **IT IS HEREBY ORDERED** that:

1. The court's order dated August 21, 2006 dismissing the action with prejudice as the result of a settlement is **VACATED**.

2. The breach of contract claim having been settled between the parties as set forth in the colloquy on the record on May 30, 2006, the breach of contract claim is **DISMISSED** with prejudice.

3. The dismissal of the breach of contract claim

is without prejudice to the right of the plaintiff to appeal the dismissal by the court of other claims in this action

s/_____

ENTERED SEP 22, 2006 William H. Yohn Jr., Judge

September 19, 2006

The Honorable William H. Yohn, Jr.
United States District Court
Eastern District of Pennsylvania
14613 United States Courthouse
Sixth & Market Streets
Philadelphia, PA 19106-1753
(Via FedEx)

Re: Order on Bealer, et al v. Mutual Fire, et al (Case No. 04-5915)

Dear Judge Yohn:

I have been advised by an attorney to write to you to correct the order we received from the court.

Prior to the hearing, defense counsel argued for several months that the only cause of action left was the contract amount. He repeated that to me off the record and to all of us on the record. This court repeatedly emphasized that this trial was to be only about the contact amount. No other issues were being considered (such as several confidentiality agreements).

Further, defense counsel's offer was only for that contract amount and his proposal included a provision that it be done without interfering with any appeals (both on and off the record).

When I agreed to this limited settlement, it was on the condition that it not interfere with any other causes of action. There were several causes of action to be appealed for 2003 acts by defendants as well as bad acts from several other years. It was 100% clear to me that I was settling the contract amount and nothing else. Ev-

eryone there was on the same page.

Then after a couple of months, defense counsel decided he wanted his defendants to skate on all 2003 acts. And now, this order sounds like I settled on all acts. It's a good thing I didn't cash the checks yet as who knows where this could end up. If we cannot cash the checks, I guess we will have to appeal the entire proceeding.

We look forward to this court's amendment of the order to what it actually was: a settlement on the contract amount and only that.

We have attached a copy of the transcript (with emphasis added) and the order for your convenience.

Respectfully yours,

cc: Guy Donatelli

Donald A. Bealer
Pro Se Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DONALD A. BEALER	:	CIVIL ACTION
Individually and doing business	:	
as Bealer Consulting	:	
	:	
vs.	:	
THE MUTUAL FIRE, MARINE	:	
AND INLAND INSURANCE	:	
COMPANY, ET AL.	:	NO. 04-5915

ORDER

AND NOW, TO WIT: this 21st day of August, 2006, it having been reported that the issues between the parties in the above action have been settled and upon Order of the Court pursuant to the provisions of Rule 41.1(b) of the Local Rules of Civil Procedure of this Court, it is

ORDERED that the above action is **DISMISSED** with prejudice, pursuant to agreement of counsel without costs.

ALL PENDING MOTIONS ARE DISMISSED AS MOOT.

MICHAEL E. KUNZ, Clerk of Court

BY: s/_____
Rita L. Polkowski
Deputy Clerk

Civ. 2 (8/2000)
41(b).frm

2

No. 07-814

FILED
JAN 10 2008
OFFICE OF THE CLERK
SUPREME COURT, U.S.

In The

Supreme Court of the United States

DONALD A. BEALER; MARIANNE C. BEALER;
JAMES R. BEALER (WITHDRAWN),

Petitioners,

v.

THE MUTUAL FIRE, MARINE AND
INLAND INSURANCE COMPANY; THE FRANKLIN
HOMEOWNERS ASSURANCE COMPANY;
FHA HOLDING COMPANY; MIKE PETRELIA,
INDIVIDUALLY AND AS CFO & TREASURER;
FRANK MCCALL, INDIVIDUALLY AND
AS ASSISTANT CONTROLLER,

Respondents.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Third Circuit

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether Petitioners have presented compelling reasons to grant the Petition, where the Third Circuit's Opinion affirming the District Court's analysis dismissing the claims which failed to plead causes of action upon which relief could be granted correctly applied Pennsylvania law on the state tort claims and on the federal RICO claim?

2. Whether Petitioners have presented compelling reasons to grant the Petition, where the Third Circuit's Opinion affirming the District Court's entry of summary judgment based upon the applicable statute of limitations correctly held that Petitioner's claims were time-barred under Pennsylvania law?

CORPORATE DISCLOSURE STATEMENT

Respondent Mutual Fire, Marine and Inland Insurance Company is a mutual insurance company. It does not have a parent corporation and there is no publicly held company that owns 10% or more of its stock.

Respondent FHA Holding Company, Inc. is a wholly owned subsidiary of its parent corporation, Respondent Mutual Fire, Marine and Inland Insurance Company. There is no publicly held company that owns 10% or more of its stock.

Respondent Franklin Homeowners Assurance Company is a wholly owned subsidiary of its parent corporation, Respondent FHA Holding Company, Inc. There is no publicly held company that owns 10% or more of its stock.

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STATEMENT OF THE CASE

Mr. Bealer, a *pro se* litigant, sought payment for actuarial services he claimed he performed from 1997 through 2003, for Respondent Mutual Fire, Marine and Inland Insurance Company and its related entities. His claims for relief, however, included causes of action which exceeded those permitted by Pennsylvania law as well as included an unfounded assertion of a RICO violation. His claims, like his instant Petition to this Court, were filled with fanciful delusions of crimes, lies and intrigue, which ran a course of insidious conspiracy and bias against him from the halls of Pennsylvania's capital and its Supreme Court, to the Governor's mansion, and on to the United States District Court for the Eastern District of Pennsylvania and the Third Circuit.

None of Mr. Bealer's assertions proved to have even a tincture of merit. Upon a review of his claims, the District Court determined correctly that most of the tort based claims and the RICO claims should be dismissed pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure because they failed to state a claim upon which relief could be granted. On August 31, 2005, the Mutual Fire Parties conducted an initial deposition of Mr. Bealer. Certain admissions made by Mr. Bealer during that deposition established that all of his contract claims except those arising after 2003, and his remaining tort claim (tortious interference), were time-barred. Based upon Mr. Bealer's deposition testimony, the Mutual Fire Parties filed a motion for partial summary judgment seeking a dismissal of

these time-barred claims. By Order dated February 2, 2006, the District Court granted the Mutual Fire Parties' motion for partial summary judgment. Accordingly, the only remaining claims were Mr. Bealer's contract claims for services allegedly performed in 2003, which claims the parties settled on the morning of trial by payment to Mr. Bealer of $8545.

REASONS FOR DENYING THE WRIT

Petitioners have not identified any reason, let alone a compelling one, justifying the grant of their Petition. The Third Circuit has not entered a decision in conflict with a decision of another United States court of appeals, has acted in the acceptable and usual course (as has the District Court) and has decided no issue which should be settled by this Supreme Court or which conflicts with the decisions of this Supreme Court. *See* Sup. Ct. R. 10(a), (c). There is no conspiracy against Mr. Bealer and no effort by the entire state and federal judicial system to align against him. The August 1, 2005 Order granting, in part, the Mutual Fire Parties' 12(b)(6) motion to dismiss addressed comprehensively each and every legal argument raised by Mr. Bealer. There was no error of law or abuse of discretion – Mr. Bealer's claims simply failed to plead a cognizable cause of action, and those counts were properly dismissed.

Likewise, the February 1, 2005 Order, granting the Mutual Fire Parties' motion for summary judgment recognized correctly that the contract counts and tortious interference claim were time-barred by the four-year and two-year statute of limitations, respectively. Despite providing Mr. Bealer every opportunity to support his claims against the Mutual Fire Parties, there were no disputed issues of fact regarding this defense – Mr. Bealer simply waited too long to bring them.

I. PETITIONER'S AMENDED COMPLAINT FAILED TO PLEAD CERTAIN TORT CLAIMS AND A RICO ACTION JUSTIFYING THE DISMISSAL OF THOSE CLAIMS.

The District Court was correct to grant the Mutual Fire Parties' Rule 12(b)(6) motion to dismiss, and the Third Circuit was correct to affirm. The tort claims asserted in Counts Two, Five and Seven (negligence, negligent misrepresentation and fraud, respectively) were derivative of Mr. Bealer's breach of contract claim in Count One and were barred by the "gist of the action doctrine". The "gist of the action doctrine" provides that tort claims which are derivative of a contract claim and which are alleged to have arisen during the course of a contractual relationship precludes those tort claims and justifies their dismissal. *etoll, Inc. v. Elais/Savion Adver., Inc.*, 811 A.2d 10, 19 (Pa. Super. 2002); *Bash v. Bell Telephone*, 601 A.2d 825 (Pa. Super. 1992).

Likewise, Mr. Bealer's defamation claims in Counts Three and Four (slander and libel respectively) had no merit. The alleged defamatory statement that Mr. Bealer was adamant about not altering the contents of his actuarial reports was incapable of a defamatory meaning and did not imply any undisclosed false facts. *See Paravo v. O'Connor*, 641 A.2d 607, 609 (Pa. Super. 1994) (statements not capable of a defamatory meaning, while embarrassing or expressions of opinion, are not the sort which will support a defamation claim). *See also, U.S. Healthcare, Inc. v. Blue Cross of Greater Philadelphia*, 898 F.2d 914, 917 (3d Cir. 1990), rehearing denied, cert. denied, *Independence Blue Cross v. U.S. Healthcare*, 111 S. Ct. 58, 498 U.S. 816, 112 L. Ed. 2d 33 (1991); *Rockwell v. Allegheny Health Education & Research Foundation*, 19 F.Supp.2d 401 (E.D. Pa. 1998) (to state a claim for defamation plaintiff must prove defamatory character of communication).

Nor did Mr. Bealer plead a claim for intentional infliction of emotional distress in Count Eight. Mr. Bealer failed to plead any conduct that was outrageous enough in character and so extreme in degree as to go beyond all possible bounds of decency and to be regarded as atrocious and utterly intolerable in a civilized community. *Johnson v. Caparelli*, 625 A.2d 668, 671 (Pa. Super. 1993). His allegations that the Mutual Fire Parties were "difficult" clients could not support a claim for intentional infliction of emotional distress.

Finally, Mr. Bealer's RICO claims in Count Nine were also defective. In order to state a RICO claim under section 1962(c), a plaintiff must allege the following four elements:

(1) the existence of an enterprise affecting interstate commerce;

(2) that the defendant was employed by or associated with the enterprise;

(3) that the defendant participated in the conduct or the affairs of the enterprise; and

(4) that the defendant participated in the enterprise's affairs through a pattern of racketeering activity.

Shearin v. E. F. Hutton Group, Inc., 885 F.2d 1162, 1165 (3d Cir. 1989); *Steco, Inc. v. S & T Mfg.*, 772 F.Supp. 1495, 1497-98 (E.D. Pa. 1991); *Salendor v. Mazzacone*, 686 F.Supp. 528, 530 (E.D. Pa. 1987). Section 1962(d) of Title 18, United States Code, states: "[i]t shall be unlawful for any person to conspire to violate any of the provisions of the subsections (a), (b) or (c) of this section." Accordingly, in order to plead a conspiracy under § 1962(d), a plaintiff first must state a claim under § 1962(c).

Mr. Bealer's RICO count arguably involved two RICO claims: 1) conspiracy to steal services, and; 2) using the U.S. Mail to defraud insurance regulators and policy holders by pressuring Mr. Bealer into preparing actuarial reports and opinions based upon false and misleading information. After noting that

"racketeering activity," under 18 U.S.C. § 1961(1) has been held by the Third Circuit to exclude theft of services, the District Court dismissed Mr. Bealer's allegations of theft of services as not supporting a RICO claim. *Annulli v. Panikkar*, 200 F.3d 189, 198 (3d Cir. 1999).

The District Court then noted, and the Third Circuit agreed, that Mr. Bealer's RICO claim that the individual defendants used the U.S. Mail to defraud insurance regulators and policy holder by pressuring Mr. Bealer into preparing actuarial reports and opinions based upon false and misleading information could support a RICO claim under § 1962(d) only if he could show that he had suffered an actual injury to his business or property and that the injury was caused by the defendants racketeering activity. *Maio v. Aetna, Inc.*, 221 F.3d 472, 483 (3d Cir. 2000). His claims of damage were so intangible or so indirect and attenuated, he failed to plead the causation requirement necessary to support his claim. Mr. Bealer did not allege any causes of action under any sections of the RICO statutes.

II. THE ENTRY OF SUMMARY JUDGMENT PROPERLY DISMISSED PETITIONER'S TIME-BARRED CLAIMS.

The Third Circuit was correct to affirm the grant the Mutual Fire Parties' motion for summary judgment. The remaining contract and tortious interference claims were filed outside the applicable statute

of limitations. Pennsylvania law provides that an action upon a contract, either written or unwritten, must be commenced within four years of the date that the cause of action arose. 42 P.S. § 5525; *Sevast v. Kakuras*, 841 A.2d 1062, 1070 (Pa. Super. 2003). *See also, Colonial Assurance Co. v. Mercantile and General Reinsurance Co. Ltd.*, 297 F.Supp.2d 764 (E.D. Pa. 2003) (cause of action in contract accrues at time of the breach). On actions to collect payment for services rendered, the statute begins to run from each payment as it becomes due. *Fresh Start Industries, Inc. v. ATX Telecommunications Services*, 295 F.Supp.2d 521, 523 (E.D. Pa. 2003).

The action was commenced on or about December 20, 2004. Accordingly, any claim for breach of contract that occurred on or before December 19, 2000, was barred by the four-year statute of limitations. Mr. Bealer admitted that he has been paid for all services rendered in 2000, 2001 and 2002. The claims for services performed in 1997 through 1999, as they were over four years old, were therefore time barred. Only the contract claim for approximately $8500.00 for the services performed in 2003 was filed timely, and that claim was ultimately settled by the parties.

Pennsylvania courts apply the two-year statute of limitations to tortious interference with contractual relations claims. *CGB Occupational Therapy Inc. v. RHA Health Services Inc.*, 357 F.3d 375, 378 (3d Cir. 2004); 42 P.S. § 5524. The statue of limitations begins to run when the alleged interference occurred. *Bednar v. Marino*, 646 A.2d 573, 577 (Pa. Super.

1994). The only definitive occurrence alleged or testified to by Mr. Bealer to support a claim of tortious interference occurred in March and April of 2001, when the Mutual Fire Parties allegedly made unreasonable demands upon him causing him to lose all of his clients. It was at that point that Mr. Bealer's cause of action for tortious interference arose, if he had one at all. He failed to institute that action within two years, however, and it was properly dismissed as untimely.

Mr. Bealer failed to identify any other instances that could be considered tortious interference despite being repeatedly requested to do so. On many occasions he simply refused to identify the contracts and or the persons with whom the Mutual Fire Parties allegedly interfered and testified that he would not do so even if ordered by the Court. Under these circumstances, then, the only tortious interference claim stated and the only tortious interference claim to which Mr. Bealer was willing to testify, or provide any discovery, arose in March or April of 2001. Because this claim was time barred by the applicable two-year statute of limitations, it was properly dismissed.

CONCLUSION

Petitioners have identified no compelling reasons for this Court to intervene in this matter and exercise its supervisory powers. The petition for writ of certiorari should be denied.

Respectfully submitted,

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SUPREME COURT U.S.

Supreme Court of the United States

Donald A. Bealer;
Marianne C. Bealer;
James R. Bealer (Withdrawn)

Petitioners
v.

The Mutual Fire, Marine and Inland Insurance Company; The Franklin Homeowners Assurance Company; FHA Holding Company; Mike Petrelia, Individually and as CFO & Treasurer; Frank McCall, Individually and as Assistant Controller

Respondents

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Third Circuit

Reply to Brief in Opposition
1/18/08

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Corporate Disclosure

Parties are listed on the cover sheet. There are no corporate disclosures related to plaintiffs.

Statement of the Case

As part of Mutual Fire's resurgence from rehabilitation, the Pennsylvania court supervising the process ordered them to settle about $60 million in outstanding claims against them. There are several employment and family relations between Mutual Fire and the insurance department.

According to their own financial statements, they denied every single one of those claims and have not paid a cent to those injured claimants and policyholders. There were at least 203 of these claims. Further, they claim to be writing a modest amount of new business, which they suggest has generated no claims. To do this, they pay themselves millions every year in salaries, benefits, withdrawals, etc. The total for a handful of "executives" has exceeded $50 million. There is still more than $100 million left. There are also clear elements of tax fraud, financial reporting fraud, and money laundering (such as moving money through various companies and accounts to themselves). All of this is in the financial records and court documents (or should be).

It is impossible to win every single one of those claims without massive fixes. A typical insurance company pays loss dollars on 80% of reported claims. This case is an example of how the fixes were done.

The defense has had private meetings with the various judges. It is clear from the decisions that refer to events that favor the defense, but did not happen, were not on the record, and make no sense. Defendants are on the record for nothing since the judge would not allow any interrogatories of them. In the lower court, it was statements like I withheld a report until payment was received, that I argued with them all the way, and that the initial contract was signed at the beginning of work (rather than

after completion).

The defense would then lie prolifically to the judge on the record. The judge would accept all those lies, add some of his own, and then rule in their favor. We counted at least 46 acts to fix by the lower court judge. These are discussed in detail in the appeal with some add-ons in two subsequent appeal filings.

In the appeals court, they communicated that unbelievable statement that essentially had Mutual Fire telling potential future actuaries that I refused their attempts to improperly change my opinions. They agreed with the lower court judge totally and added some lies of their own.

In summary, we repeatedly caught the defense and the judges lying about:

1) The evidence.
2) The facts.
3) The law.
4) The case law.

The defense now suggests that this was all a "fanciful delusion", including involvement by the governor and the Pennsylvania Supreme Court. They said that part. I did not. Perhaps this was an inadvertent confession from Mr. Lamb, who has ties to those offices. Maybe he has this case confused with another fix. Or maybe he has just told so many lies he can't keep track of them anymore. My reference to the governor's wife was that she knew from the facts of this case that her husband has responsibility (whether he knew it or not) and should have recused herself. We did note that no one took credit for writing the appeal opinion. With proof of private discussions and the multitude of subsequent acts by the judges, it is abundantly clear that this was fixed, perhaps through the exchange

of envelopes. $50 million buys a lot of justice. They even tried to bribe and extort me. There are no delusions here, just cold hard facts supported by the court filings.

This is not just my opinion. A survey from a couple years back cited Philadelphia as the 4th worst legal hellhole in the country (i.e. who you know and how much). A democratic mayoral candidate stated on TV that the Philadelphia Courts were corrupt all the way to the Supreme Court.

All of the criminal acts and lies have been documented throughout this case. They should be a matter of record that has been summarized in the appeal documents and in the initial petition to this court. It should all be on the record if anyone wants to look. If not, there are plenty of instances where they are now lying to the Supreme Court of the United States of America.

Reasons for Granting The Writ

We have cited various compelling reasons for hearing this case that are national in scope. These include decisions conflicting with their own Third Circuit Appeals Court (e.g. Werwinski and others cited herein), the U.S. Supreme Court (e.g. Pioneer and others), and the Pennsylvania Supreme Court.

The conspiracy here is not really about me. The conspiracy is to keep that money in the Mutual Fire management's hands and to keep greasing those palms that are part of the cover-up. I am just a big obstacle that is likely to put an end to the big payday. They are treating me just like they treat all of their claimants, policyholders, and other victims.

The defense claims there are no disputed issues of fact (Lie #1). There are numerous issues such as all the medical records that were ignored, the versions of defa-

mation that started showing up, the dates of discovery for filing the claims, the acts that I was perported to have done, etc., etc., etc.

I. Petitioner's Complaint Adequately Pled Tort Claims and the RICO Action

Much of this discussion is about case law which is not readily available to me. We were able to find most of them through Google searches. Some of the older ones were not available. Perhaps they were pre-internet. We did note that many of these are new (compared to prior filings) since we caught everyone lying about the prior case laws. We have done the best we could in identifying case citings.

The defense makes claims about two cases cited by them as part of the gist of the action doctrine. We did observe that their description of the doctrine differs from that described by the appeals court, which actually supported my claim. They should have observed that if they had read the appeal.

We could not find the eToll case by itself, but found an order from Itskowitz, MD v. White & Williams, et.al., (Philadelphia Common Pleas Court, No. 2926 dated 11/10/05) that quoted it as saying:

> Pennsylvania's gist of the action doctrine bars tort claims that: (1) arise solely from a contract between the parties; (2) where the duties allegedly breached were created and grounded in the contract itself; (3) where the liability stems from a contract; (4) where the tort essentially duplicates a breach of contract claim or the success of which is wholly dependent on the terms of the contract. eToll, Inc. v. Elais/Savion Adver., Inc., 811 A.2d 10, 19 (Pa. Super. 2002).

The gist of our case is the stress caused disability cre-

ated by their lengthy attempt to steal services for a different company (not Mutual Fire) for which we had not expected to nor contracted to do any work. This was during the peak of our busy season (between 3/1/01 to the latter part of April, 2001). That is when I started to strongly suspect the company was dishonest with me and I may be in peril for lawsuits and other disciplinary actions. Disabilities caused by stress in the workplace are common.

The response to the eToll criteria is simple:

1) There was no contract.
2) There was no contract.
3) There was no contract.
4) There was no contract.

We hope somebody gets this (there has to be a contract).

We also could not find Bash v. Bell, but we did find some cases that referred to it. The case involved a phone listing that was not published inadvertently. Presumably, plaintiffs were claiming lost revenue.

In Hellings et. al. v. NVR, Inc. et. al. (U.S. District Court for the Eastern District of Pennsylvania, No. 06-CV-3089, 12/6/06), Bash v. Bell and several others are cited:

> ...a tort claim is maintainable only if the contract is 'collateral' to conduct that is primarily tortious." Caudill Seed and Warehouse Company, Inc. v. Prophet 21, Inc., 123 F. Supp. 2d 826, 833 (E. D. Pa. 2000), citing Sunquest Information Systems, Inc. v. Dean Witter Reynolds, Inc. 40 F. Supp. 2d 644, 651 (W.D. Pa. 1999); Bash v. Bell Telephone Co., 411 Pa. Super. 347, 601 A. 2d 825 (1992). Courts differentiate tort from contract claims, in part, by the source of the duty imposed on the defendant: tort actions lie for breaches of duties imposed by law as a matter of social policy, while con-

tract actions lie only for breaches of duty imposed by mutual consensus agreements between particular individuals. Chemtech International, Inc. v. Chemical Injection Technologies, Inc. 170 Fed. Appx. 805, 809 (3d Cir. March 20, 2006), citing Sullivan v. Chartwell Investment Partners, L.P., 873 A. 2d 710, 719 (Pa. Super. 2005). See Also, Redevelopment Authority of Cambria County v. International Insurance Company, 454 Pa. Super. 374, 392, 685 A. 2d 581, 590 (1996).

In Auger, et. al. v. The Stouffer Corporation, et.al. (U.S. District Court for Eastern PA, C.A. No. 93-2529 dated 8/14/95), the court stated:

> the distinction between actions in trespass and assumpsit, arising out of the performance of a contract, is no longer precise. At its most succinct,
>
> > generally, when the breach of a contractual relationship is expressed in terms of tortious conduct, the cause of action is properly brought in assumpsit and not in trespass. However, there are circumstances out of which a breach of contract may give rise to an actionable tort. The test used to determine if there exists a cause of action in tort growing out of a breach of contract [*8] is whether there was an improper performance of a contractual obligation (misfeasance) rather than the mere failure to perform (nonfeasance).
>
> Grode v. Mutual Fire Insurance Co., 154 Pa. Commw. 366, 623 A.2d 933, 935 (Pa. Cmwlth. 1993), citing Raab v. Keystone Insurance Co., 271 Pa. Super. 185, 412 A.2d 638, 639 (Pa. Super. 1979), Hirsch v. Mount Carmel Dist. Ind. Fund, Inc., 363 Pa. Super. 433, 526 A.2d 422, 423 (Pa. Super. 1987).
>
> The deliberate attempt to steal services along with

the fraud and misrepresentation issues clearly are misfeasance vs. nonfeasance as in the prior Grode v. Mutual Fire case citing. It is also clearly about duties imposed by law as a matter of social policy compared to mutual consensus agreements which did not exist (in contract). These were simply illegal activities which are noncontractual and nonconsensual.

We should also point out that the gist of the action doctrine does not apply to bodily injuries. There are thousands of bodily injury claims against warranted auto part defects (contract). Examples include Pinto gas tanks, Goodrich tires, and SUV rollovers.

There is nothing here in support of denying our claim due to the gist of the action doctrine as stated by the defense herein using their own case citings (Lie #2).

As to defamation, we couldn't find any of those cases either (they are all pretty old). The statements about being adamant about little wording changes was a near death sentence in a business where your willingness to work with clients and consider alternatives is of the utmost importance. Their statements were totally false and were done with malice. The first group of statements occurred after I refused to enable them to steal the surplus of a company they tried to acquire. The second known statements were made to the insurance department after I filed suit. The insurance department suddenly became obsessed about what I might write while I was in the middle of a project with them. They then non-renewed our consultant status. The suggestion of only one act of defamation that doesn't even make sense is Lie # 3.

As to RICO violations, they aggravated the condition they caused in 2001 during 2003 through a variety of illegal interstate acts, including thefts of services, bribery, extortion, interference with interstate commerce, and ob-

struction of justice. They carried out the extortion threats by refusing to pay $8,545. That loss was clearly RICO, as was the continued loss of business income due to disability and defamation. The income loss was charted very clearly by year in the Amended Complaint. There were other damages as well. In summary, we had very specific damages due to RICO causes that were spelled out.

II. Summary Judgment Was Not Supported by the Law or the Facts

Defendants cite a 4-year statute of limitations on contract claims and cite Sevast and Colonial Assurance. They suggest that the action accrues at the time of the breach. We found both cases. In Colonial, the statute of limitations "begin[s] to accrue as of the date on which the relationship between two parties is terminated". Sevast is similar. Under their own case citings, the statute on all claims would not have run out until late 2007. I resigned in late 2003.

Further, they cite CGB v. RHA and Bednar v. Marino as to the two-year statute of limitations on contractual interference claims commencing when the alleged interference occurred. In CGB, the Third Circuit Appeals Court specifically states on page 11:

> The Pennsylvania Supreme Court and this Court have repeatedly admonished, however, that a statute of limitations begins to run only once a plaintiff can assert and maintain an action. See, e.g., Pocono Int'l Raceway, 468 A.2d 471; Bohus, 950 F.2d at 924. In other words, "[a] claim under Pennsylvania law accrues at 'the occurrence of the final significant event necessary to make the claim suable.'" Barnes v. American Tobacco Co., 161 F.3d 127, 136 (3d Cir. 1998) (internal citation omitted).

The claim was not suable until I knew what the injuries were and the cause of those injuries (see Werwinski Appeal) (Lie # 4). We included a time dated fax in our Amended Complaint showing the causes of my disability from a medical textbook in August, 2004. That was the same month we filed the initial suit. We also filed numerous medical records from the endocrinologist and other medical professionals for support. This is called the discovery rule, which applies to the vast majority of actions across the country (including PA and including this case).

The disability (extremely low testosterone levels) began on March 1, 2001 due to their actions. At that time, little was known about it in the medical profession. I was treated for numerous symptoms, went through numerous tests, saw numerous specialists, and took various courses of action (such as dieting). Cause was simply not reasonably obtainable until August, 2004.

Defendant attorneys claim they asked repeatedly about other tortious interference claims and I failed to identify them. The fact is, I did in 45 pages of deposition and in other documents that did identify certain individuals. They repeatedly said there were no recent interferences identified by me in their summary judgment motion (Lie # 5). (It was a lie then too).

Defendant attorneys even have gone so far as to state that I would not identify parties that Mutual Fire interfered with "and testified that he would not do so even if ordered by the court (Lie # 6). This was previously conveyed to the lower court and the appeals court. That never happened and we urge you to review pages 31-34 of the 8/31/05 deposition.

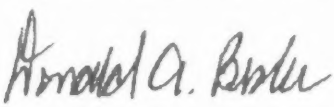
Conclusion

Defendants have never put up a valid defense to any of these claims other than to "FIX" them. It is 100% clear in this argument, just as it was in all their previous arguments. Instead, they repeatedly lied about the facts, the evidence, the law and the case laws. Now they have willfully and wantonly lied at least 6 times herein to the Supreme Court of the United States. The Nifong incident taught the whole country that it is not just ethically challenged to lie to judges, it is a crime. More than 90% of the public agreed with his disbarment and imprisonment.

This case goes to the root premise of the justice system where we all promise "to tell the truth, the whole truth and nothing but the truth, so help you God." The news is full of indictments and jail terms for citizens lying to investigators. And yet we bring you a group of lawyers (including defendants themselves) and judges that are repeatedly caught lying in their financial statements, briefs, and decisions without consequence.

Severe penalties are warranted along with an actual fair and impartial jury trial (like in New Jersey). We also respectfully request that our busy season be avoided if possible. The real crunch time is expected to be during February to mid March.

Respectfully & Honestly Submitted,



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